

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

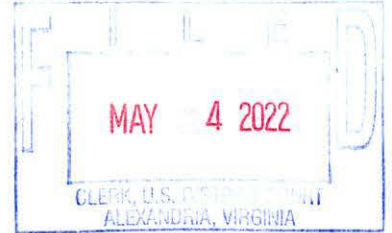
UNITED STATES OF AMERICA

v.

KEVIN MCAVENIA,

*Defendant.*

Case No. 1:22-MJ-92



**CONSENT MOTION FOR ENTRY OF PROTECTIVE ORDER**

The United States of America, by and through its attorneys, Jessica D. Aber, United States Attorney for the Eastern District of Virginia, and Rachel L. Rothberg, Special Assistant United States Attorney, with the consent of the defendant, Kevin McAvenia, and the defendant's attorney, respectfully files this motion for entry of a Protective Order. Certain of the discovery materials in the subject case contain sensitive information regarding minors, as well as an ongoing law enforcement operation. Accordingly, the government respectfully requests that the Court issue the attached Protective Order, and in support thereof, states as follows:

1. On April 20, 2022, the defendant was arrested pursuant to an arrest warrant and criminal complaint charging him with one count of receipt of child pornography, in violation of 18 U.S.C. § 2252(a)(2). See DE 1 (Complaint), 8 (Arrest Warranted Return). The defendant made his initial appearance in the Eastern District of Virginia the same day, and a preliminary hearing and detention hearing was set for April 21, 2022. See DE 10.

2. On April 21, 2022, the parties appeared before the Honorable Ivan D. Davis, United States Magistrate Judge for the Eastern District of Virginia, for the preliminary hearing and detention hearing. See DE 14. The defendant appeared with his retained counsel. The Honorable

Judge Davis ordered the defendant released on pretrial conditions pending further legal proceedings. See DE 15.

3. On May 2, 2022, the Honorable Judge Leonie M. Brinkema, United States District Judge for the Eastern District of Virginia, granted the parties' joint motion for extension of time to indict. See DE 18. The indictment deadline has now been extended through and including June 16, 2022 to provide the parties with additional opportunity to review the large quantity of forensic evidence in this matter—including child pornography evidence which must remain in the government's possession—and to discuss the possibility of a pre-indictment resolution.

4. Discovery materials the government intends to produce pursuant to its discovery obligations under Federal Rule of Criminal Procedure 16 include law enforcement sensitive items related to the ongoing investigation of other persons suspected of engaging in online child sexual exploitation. Public dissemination of the government's investigative materials, including search warrant affidavits, reports of investigation, seized electronic devices data, and the information contained therein, could seriously jeopardize those continuing investigations, and may further reveal sensitive information related to minor victims or witnesses.

5. The government has made efforts to protect this information through redactions. However, out of an abundance of caution, the government requests that the Court enter, pursuant to the authority granted by Fed. R. Crim. P. 16(d)(1), a Protective Order precluding the defendant from disseminating discovery items to anyone other than counsel and members of the defendant's litigation and investigative team. As proposed in the Protective Order, defense counsel and the defendant's litigation team may show and display materials produced in discovery to the defendant, but may not provide a copy of materials produced in discovery to the defendant or to third parties to keep and maintain in their possession. Further, defense counsel and the defendant's

litigation team shall return materials produced in discovery to the United States Attorney's Office within 10 days upon conclusion of the case before this Court, or, if an appeal is taken, upon completion of such an appeal, or destroy all discovery and certify to the United States Attorney's Office that it has been destroyed.

6. Any materials produced in discovery, or information contained therein, that are filed with the Court in connection with pre-trial motions, trial, sentencing, or other matter before this Court, shall be filed under seal and shall remain sealed until otherwise ordered by this Court. This would not entitle either party to seal their filings as a matter of course. The parties are required to comply in all respects to the relevant local and federal rules of criminal procedure pertaining to the sealing of court documents.

7. Any violation of any term or condition of the Proposed Order by the defendant, the defendant's attorney(s) of record, any member of the defense team, or any attorney for the United States Attorney's Office for the Eastern District of Virginia, may be sanctioned by contempt of court, and/or may be subject to monetary or other sanctions as deemed appropriate by this Court.

8. This motion and the proposed Protective Order are submitted for the purpose of ensuring that national law-enforcement-sensitive information contained in discovery materials are not disseminated to third parties. The requested relief is narrowly tailored to ensure that the confidential information identified above will remain protected.

9. Counsel for the United States has conferred with counsel for the defendant. The defense agrees to the terms of the proposed Protective Order and the contents of this motion.

Based on the foregoing, the United States respectfully requests that the Court authorize the



CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2022, I electronically filed the foregoing document with the Clerk of Court and caused a copy to be served upon counsel of record.

/s/  
Rachel L. Rothberg  
Special Assistant United States Attorney (LT)